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9 COMMITTEES FOR LAND, AIR, WATER AND SPECIES

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

COMMITTEES FOR LAND, AIR,
WATER AND SPECIES, a California
public benefit corporation,

Plaintiff,

vs.

CITY OF LOMPOC, a California
municipal corporation,

Defendant.

Civil Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)

COMMITTEES FOR LAND, AIR, WATER AND SPECIES (“CLAWS” or
“Plaintiff”), a California public benefit corporation, by and through its counsel, hereby
alleges:

I. INTRODUCTION

1. This complaint seeks relief for ongoing and continuous violations by
CITY OF LOMPOC (“Defendant” or “City”) of the Federal Water Pollution Control
Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or “Act”) and the National

1 Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, State
2 Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended
3 by Water Quality Order No. 92-12-DWQ, Water Quality Order No. 97-03-DWQ and
4 Order No. 2014-0057-DWQ (“Permit” or “General Permit”), resulting from those
5 industrial activities occurring at the facility owned and operated by City at 1300 West
6 Laurel Avenue, Lompoc, California (“Facility” or “Yard”).
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9 2. With each significant rain event, millions of gallons of polluted storm
10 water originating from industrial operations like those conducted at the Facility pour
11 into storm drains and local waterways. The consensus among agencies and water
12 quality specialists is that this pollution accounts for more than half of the total
13 pollution entering surface waters each year.
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16 3. Industrial facilities, like the Defendant’s, that discharge storm water and
17 non-storm water contaminated with sediment, heavy metals, and other pollutants
18 contribute to the impairment of downstream waters and aquatic dependent wildlife,
19 expose people to such toxins, and harm the aesthetic and recreational significance
20 Santa Barbara’s waterways have for residents of these communities and visitors alike.
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23 **II. JURISDICTION AND VENUE**

24 4. This is a civil suit brought under the citizen suit enforcement provisions
25 of the Act. This Court has subject matter jurisdiction over the parties and the subject
26 matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. §
27 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United
28

1 States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201–02 (power
2 to issue declaratory relief in case of actual controversy and further necessary relief
3 based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and 33
4 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

5
6 5. On April 26, 2017 CLAWS issued a sixty (60) day “Notice of Violation
7 and Intent to File Suit” letter (“Notice Letter”) to the City detailing its violations of
8 both substantive and procedural provisions of the Act and Permit. The Notice Letter
9 informed the Defendants of CLAWS’ intent to file suit against it to enforce the Act
10 and Permit at the close of the 60-day period required by law. 33 U.S.C. §
11 1365(b)(1)(A).

12
13 6. The Notice Letter was also sent to the Attorney General of the United
14 States, the Administrator of the United States Environmental Protection Agency
15 (“EPA”); the Administrator of EPA Region IX; the Executive Director of the State
16 Water Resources Control Board (“State Board”); and the Executive Officer of the
17 California Regional Water Quality Control Board, Central Coast Region (“Regional
18 Board”), as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy
19 of the Notice Letter is attached as **EXHIBIT A**, and is incorporated by reference.

20
21 7. More than sixty (60) days have passed since the Notice Letter was served
22 on City and sent to the federal and State agencies.

23
24 8. Plaintiff is informed and believes, and thereupon alleges, that neither the
25 EPA nor the State of California has commenced or is diligently prosecuting a court
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1 action to redress the violations alleged in this complaint.

2 9. This action's claim for civil penalties is not barred by any prior
3 administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).
4

5 10. Venue is proper in the Central District of California pursuant to Section
6 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
7 located within this judicial district.
8

9 **III. PARTIES**

10 11. Plaintiff is a non-profit public benefit corporation organized under the
11 laws of the State of California with its main office in Santa Barbara, California.
12

13 12. Incorporated in 2014, CLAWS advocates for social and environmental
14 justice. The organization's mission is, *inter alia*, to advocate for and protect the
15 people and natural resources of California's Central Coast region. The organization
16 works to achieve its goals through a synergy of education, outreach, organizing,
17 litigation and regulatory programs that ensure the preservation, protection, and
18 defense of the Central Coast region's natural and human communities. Its members
19 reside in California and travel and recreate throughout the state, including in Lompoc.
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23 13. CLAWS' members use the Santa Ynez River and the Pacific Ocean, its
24 beaches and connected waterways throughout Santa Barbara County to fish, surf,
25 swim, sail, SCUBA and free dive, kayak, bird watch, view wildlife, hike, bike, walk,
26 and run as well as for contemplative and spiritual activities. The unlawful discharge
27 of pollutants from the Facility into local waters impairs the ability of CLAWS'
28

1 members to use and enjoy these waters. Thus, CLAWS' interests have been, are
2 being, and will continue to be adversely affected by the Facility's failure to comply
3 with the Act and Permit.
4

5 14. Continuing commission of the acts and omissions alleged herein will
6 irreparably harm Plaintiff and its members, for which they have no plain, speedy or
7 adequate remedy at law.
8

9 15. CLAWS is informed and believes, and thereon alleges, that City is an
10 active California municipal corporation.
11

12 16. CLAWS is informed and believes, and thereon alleges, that Defendant is
13 the legally responsible party for operations occurring at the Facility.
14

15 **IV. LEGAL BACKGROUND**

16 **A. The Clean Water Act.**

17 17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
18 any pollutant into waters of the United States unless the discharge complies with
19 various enumerated sections of the statute. Among other things, section 301(a)
20 prohibits discharges not authorized by, or in violation of, the terms of NPDES permits
21 issued pursuant to section 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342(b). The Act
22 requires all point source discharges of pollutants to waters of the United States be
23 regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. § 122.26(c)(1).
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27 18. "Waters of the United States" are defined as "navigable waters," and "all
28 waters which are currently used, were used in the past, or may be susceptible to use in

1 interstate or foreign commerce, including waters which are subject to the ebb and flow
2 of the tide.” 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

3
4 19. The EPA promulgated regulations defining “waters of the United States.”
5 See 40 C.F.R. § 122.2. The EPA interprets waters of the United States to include not
6 only traditionally navigable waters, but also other waters, including waters tributary to
7 navigable waters, wetlands adjacent to navigable waters, and intermittent streams that
8 could affect interstate commerce.
9

10 20. The Act confers jurisdiction over waters that are tributaries to
11 traditionally navigable waters where the water at issue has a significant nexus to the
12 navigable water. See *Rapanos v. United States*, 547 U.S. 715 (2006); see also *N. Cal.*
13 *River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).
14
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16 21. A significant nexus is established if the water in question “either alone or
17 in combination with similarly situated lands in the region, significantly affect the
18 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547
19 U.S. at 780; *N. Cal. River Watch*, 496 F.3d at 999-1000.
20

21 22. Section 505(a)(1) of the Act provides for citizen enforcement actions
22 against any “person” who is alleged to be in violation of an “effluent standard or
23 limitation...or an order issued by the Administrator or a State with respect to such a
24 standard or limitation.” See 33 U.S.C. §§ 1365(a)(1) and 1365(f).
25
26

27 23. Defendant City is a “person” within the meaning of section 502(5) of the
28 Act. See 33 U.S.C. § 1362(5).

1 24. An action for injunctive relief is authorized under section 505(a) of the
2 Act. *See* 33 U.S.C. § 1365(a)(1).

3 25. Each separate violation of the Act subjects the violator to a penalty of up
4 to \$51,570 per day for violations occurring after November 2, 2015; and up to
5 \$37,500 per day per violation for violations occurring prior to and including
6 November 2, 2015. 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4 (Adjustment
7 of Civil Monetary Penalties for Inflation).
8

9 26. Section 505(d) of the Act allows prevailing or substantially prevailing
10 parties to recover litigation costs, including fees for attorneys, experts, and
11 consultants. *See* 33 U.S.C. § 1365(d).
12

13 27. Under the Act, plaintiffs are protected from the suddenly repentant
14 defendant by the authority of the district courts to award litigation costs whenever the
15 court determines such award is appropriate. 33 U.S.C. § 1365(d). The legislative
16 history of this provision states explicitly that the award of costs should extend to
17 plaintiffs in actions which result in successful abatement but do not reach a verdict.
18 For instance, if as a result of a citizen proceeding and before a verdict is issued, a
19 defendant abated a violation, the court may award litigation expenses borne by the
20 plaintiffs in prosecuting such actions. *See* S. Rep. No. 92-414, p. 81 (1971), 2 Leg.
21 Hist. 1499; *see also Gwaltney of Smithfield v. Chesapeake Bay Found.* 484 U.S. 49
22 (1987).
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B. California's Storm Water Permit.

28. The State Board is charged with regulating pollutants to protect California's water resources. *See* Cal. Water Code § 13001.

29. Section 402(p) of the Act establishes a framework for regulating industrial storm water discharge under the NPDES permit program. 33 U.S.C. § 1342(p).

30. Section 402(b) of the Act allows each state to administer an EPA-approved NPDES permit program for regulating the discharge of pollutants, including discharges of polluted storm water. *See* 33 U.S.C. § 1342(b).

31. States with approved NPDES permit programs are authorized by Section 402(b) to regulate industrial storm water discharges through the issuance of a statewide general NPDES permit applicable to all industrial dischargers and/or through individual NPDES permits issued to dischargers. *See* 33 U.S.C. § 1342(b).

32. California is a state authorized by EPA to issue NPDES permits. The Permit is a statewide general NPDES permit issued by the State Board.

33. Between 1997 and June 30, 2015, the Permit in effect in California was Order No. 97-03-DWQ, which CLAWS refers to herein as the "1997 Permit."

34. On July 1, 2015, California re-issued the Permit pursuant to Order No. 2014-0057-DWQ's NPDES, which is referred to herein as the "2015 Permit."

35. The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more so, than the terms of the 1997 Permit.

1 See 2015 Permit, Findings, ¶ 6.

2 36. Prior to beginning industrial operations, dischargers are required to apply
3 for coverage under the Permit by submitting a Notice of Intent (“NOI”) application
4 for coverage to the State Board. 1997 Permit, Finding #3; 2015 Permit, Findings, ¶ 17.

6 37. In order to discharge storm water lawfully in California, industrial
7 dischargers must secure coverage under the Permit and comply with its terms, or
8 obtain and comply with an individual NPDES permit. 1997 Permit, Finding #2; 2015
9 Permit, Findings ¶ 12.

11 38. Compliance with the Permit constitutes compliance with the Act for
12 purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E).
13 Conversely, violations of the Permit are violations of the Act. 1997 Permit, Section
14 C(1); 2015 Permit, Section XXI(A).

17 **C. The Permit’s Discharge Prohibitions, Effluent Limitations, and**
18 **Receiving Water Limitations.**

19 39. The Permit contains various prohibitions and limits for stormwater
20 discharges to a facility’s Receiving Waters. Receiving Waters are those surface,
21 estuarine, ocean and other waters to which pollutants may be discharged from a given
22 facility.
23

24 40. The Permit contains a Discharge Prohibition on the direct or indirect
25 discharge of materials other than storm water (“non-storm water discharges”) that is
26 not otherwise authorized by an NPDES permit to waters of the United States. 1997
27
28

1 Permit, Section A(1); 2015 Permit, Section III(B).

2 41. The Permit also contains various specific and generalized Effluent
3 Limitations. 1997 Permit, Section C; 2015 Permit, Section V.
4

5 42. The relevant Permit's Effluent Limitations are violated each time the
6 Facility discharges stormwater that has not been subjected to BMPs that achieve
7 BAT/BCT.
8

9 43. The Permit contains an Effluent Limitation that requires permittee
10 facilities to reduce or prevent pollutants in storm water discharges through the
11 implementation of Best Available Technology Economically Achievable ("BAT") for
12 toxic or non-conventional pollutants, and Best Conventional Pollutant Control
13 Technology ("BCT") for conventional pollutants. 40 C.F.R. §§ 401.15-16; 1997
14 Permit, Section B(3); 2015 Permit, Section V(A).
15
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17 44. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper,
18 lead, and zinc, among others. Conventional pollutants are listed at 40 C.F.R. § 401.16
19 and include biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), oil
20 and grease ("O&G"), pH, and fecal coliform. *See* 1997 Permit, Section B(3); *see also*
21 2015 Permit, Section V(A).
22
23

24 45. BAT and BCT include both structural (e.g. installation of curbs to direct
25 storm water flows) and non-structural (e.g. sweeping) measures.
26

27 46. Permittee facilities must implement site-specific structural and non-
28 structural Best Management Practices ("BMPs") that achieve BAT and BCT

standards.

47. EPA's NPDES Storm Water Multi-Sector General Permit for Industrial Activities ("MSGP") includes numeric benchmarks for pollutant concentrations in storm water discharges ("Benchmarks") that are numeric thresholds to aid in determining whether a facility discharging industrial storm water had implemented the requisite BAT and/or BCT as mandated by the Act. *See* United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity, as modified effective May 9, 2009.

48. EPA's Benchmarks serve as objective measures for evaluating whether the BMPs designed and implemented at a facility achieve the statutory BAT/BCT standards. *See* MSGP, 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); *see also* MSGP, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); *see also* MSGP, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000).

49. Discharges from the Facility containing pollutant concentrations that exceed EPA Benchmarks indicate that City has not developed and/or implemented BMPs that meet BAT for toxic pollutants and/or BCT for conventional pollutants.

50. The State Board established Numeric Action Levels ("NALs") in the 2015 Permit. *See* 2015 Permit, Section V(A). NALs are derived from, and function similar to, EPA benchmarks. *See* 2015 Permit Fact Sheet, Section I(D)(5). NALs and Benchmarks represent pollutant concentrations at which a storm water discharge could impair, or contribute to impairing, water quality and/or affect human health.

1 51. NALs are not the relevant numeric limits for making determinations
2 about whether a discharger has complied with the Permit Effluent Limitations and
3 Receiving Water Limitations. “The NALs are not intended to serve as technology-
4 based or water quality-based numeric effluent limitations.” 2015 Permit, Finding 63.
5 The NALs are not derived from either BAT/BCT requirements or receiving water
6 objectives. *Id.* Thus, the purpose of NALs is to signal to owner/operators, the public
7 and state agencies when a facility’s BMPs are so clearly deficient that immediate
8 remedial actions are necessary.
9
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12 52. The Permit also contains various Receiving Water Limitations. 1997
13 Permit, Section C(1)-(2); 2015 Permit, Section VI.
14

15 53. The Receiving Water Limitations prohibit storm water discharges that
16 cause or contribute to an exceedance of any applicable water quality standards in any
17 affected receiving water. *See* 1997 Permit, Section B; *see also* 2015 Permit, Section
18 VI(A).
19

20 54. The Receiving Water Limitations prohibit storm water discharges from
21 adversely impacting human health or the environment. *See* 1997 Permit, Section C(1);
22 *see also* 2015 Permit, Section VI(B).
23

24 55. The Receiving Water Limitations prohibit storm water discharges that
25 contain pollutants in quantities that threaten to cause pollution or a public nuisance.
26 2015 Permit, Section VI(C).
27

28 56. A facility is in violation of the Permit’s Receiving Water Limitation

1 when its storm water discharges contain pollutant levels that: i) exceed an applicable
2 WQS; ii) exceed levels known to adversely impact aquatic species and the
3 environment; or iii) threaten to cause pollution.
4

5 57. WQS are pollutant concentration levels determined by the State Board,
6 the various regional boards and/or the EPA to be protective of the beneficial uses of
7 the water that receive polluted discharges.
8

9 58. WQS applicable to the discharges covered by the Permit include, but are
10 not limited to, those set out in the *Water Quality Control Plan for the Central Coast*
11 *Basin* (March 2016 Edition) ("Basin Plan"), and in the Criteria for Priority Toxic
12 Pollutants for the State of California (a.k.a. California Toxics Rule or "CTR"). 40
13 C.F.R. § 131.38; *see also* 65 Fed. Reg. 31712 (May 18, 2000).
14
15

16 59. The CTR includes numeric criteria set to protect human health and the
17 environment in the State of California.
18

19 60. The Regional Board identifies beneficial uses of the Receiving Waters
20 and establishes water quality standards in the Basin Plan. The beneficial uses of the
21 Receiving Waters include, but may not be limited to, Municipal and Domestic Supply
22 (MUN), Agricultural Supply (AGR), Ground Water Recharge (GWR), Water Contact
23 Recreation (REC1), Non-Contact Water Recreation (REC2), Warm Fresh Water
24 Habitat (WARM), Cold Fresh Water Habitat (COLD), Wildlife Habitat (WILD),
25 Spawning, Reproduction and/or Early Development Habitat (SPWN), Commercial
26 and Sport Fishing (COMM), Industrial Process Supply (PRO), Industrial Service
27
28

1 Supply (IND), Migration of Aquatic Organisms (MIGR), Rare, Threatened, or
2 Endangered Species (RARE), Preservation of Biological Habitats of Special
3 Significance (BIOL), Estuarine Habitat (EST), Shellfish Harvesting (SHELL), and
4 Marine Habitat (MAR).

6 61. Surface waters that cannot support Beneficial Uses of those waters listed
7 in the Basin Plan are designated as impaired water bodies pursuant to section 303(d)
8 of the Act. According to the Regional Board's 2012 303(d) List of Impaired Water
9 Bodies, the Santa Ynez River (below city of Lompoc to the Ocean) is impaired for the
10 following pollutants: Chloride, Escherichia coli (E. coli), Fecal Coliform, Low
11 Dissolved Oxygen, Nitrate, Sedimentation/Siltation, sodium, temperature and Total
12 Dissolved Solids.¹

16 62. The 2015 Permit requires a discharger to monitor additional parameters if
17 discharges from its facility contributes pollutants to receiving waters that are listed as
18 impaired for those pollutants. For example, if a permittee facility discharges to a
19 water body that is listed as impaired for copper, and the discharge(s) from its facility
20 is *a potential source* of copper, the permittee must add copper to the list of parameter
21 to monitor in its storm water discharges. 2015 Permit, Section XI.B.6.e.

24 63. Activities at the Facility *have, are and will continue to* contribute to these
25 impairments.
26

28 ¹ Available at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/2012state_ir_reports/00955.shtml#23556
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1 64. The Basin Plan also contains various narrative standards that satisfy State
2 and federal requirements to protect beneficial uses of Receiving Waters as outlined in
3 paragraph 60.
4

5 65. The Basin Plan provides that “[w]hen other conditions cause degradation
6 of water quality beyond the levels or limits established as water quality objectives,
7 controllable conditions shall not cause further degradation of water quality.” Basin
8 Plan, p. 3-1.
9

10 66. The Basin Plan provides the following Water Quality Standard (“WQS”)
11 regarding the degradation of high quality waters: “Wherever the existing quality of
12 water is better than the quality of water established herein as objectives, such existing
13 quality shall be maintained unless otherwise provided” for in State or Federal law.
14
15 *Id.*, p. 3-2.
16

17 67. The Basin Plan provides the following WQS for suspended materials:
18 “Waters shall not contain suspended material in concentrations that cause nuisance or
19 adversely affect beneficial uses.” *Id.*, p. 3-3.
20

21 68. The Basin Plan provides the following WQS for oil and grease: “Waters
22 shall not contain oils, greases, waxes, or other similar materials in concentrations that
23 result in a visible film or coating on the surface of the water or on objects in the water,
24 that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.*
25
26

27 69. The Basin Plan provides the following WQS for Sediment: “The
28 suspended sediment load and suspended sediment discharge rate of surface waters

1 shall not be altered in such a manner as to cause nuisance or adversely affect
2 beneficial uses.” *Id.*

3 70. The Basin Plan provides a standard for chemical constituents specifically
4 for the protection agricultural uses, and specifically for the protection of crops and
5 soils: “Waters shall not contain concentrations of chemical constituents in amounts
6 which adversely affect the agricultural beneficial use.” The Basin Plan contains
7 various numeric limits at which different pollutants adversely affect agricultural
8 beneficial uses. *See* Basin Plan, Table 3-3.

9 71. The U.S. EPA has adopted freshwater numeric water quality standards
10 potentially applicable to discharges from the Facility in the CTR for zinc of 0.120
11 mg/L (Criteria Maximum Concentration – “CMC”), for copper of 0.013 mg/L (CMC),
12 and for lead of 0.0025 mg/L (Criteria Continuous Concentration – “CCC”).²

13 72. Although pollution and habitat destruction have drastically altered the
14 natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish
15 and bird species, as well as macro-invertebrate and invertebrate species. The public,
16 both tourists and residents alike, make extensive use of the Receiving Waters for
17 water contact sports, fishing, non-contact recreational, and aesthetic opportunities,
18 such as wildlife observation, and sunbathing. Furthermore, the Receiving Waters
19 provide an important source of irrigation water on which the regional economy
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28 ² These values are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

1 depends.

2 73. Polluted discharges from the Facility expose many people to
3 contaminants that threaten public health and welfare, and impair natural ecosystems
4 that depend on the Receiving Waters. Polluted storm water and non-storm discharges
5 harm the special aesthetic, economic and recreational significance the Receiving
6 Waters have for the public, including CLAWS' members.
7
8

9 74. Discharges of pollutants at levels above WQS contribute to the
10 impairment of the beneficial uses of the waters receiving the discharges and constitute
11 violations of the Permit and Act.
12

13 75. Discharges with pollutant levels in excess of the CTR criteria, the Basin
14 Plan standards, and/or other applicable WQS are violations of the Permit's Receiving
15 Water Limitations.
16

17 **D. The Permit's Planning and BMP Design Requirements.**
18

19 76. Dischargers must develop and implement a Storm Water Pollution
20 Prevention Plan ("SWPPP") at the time industrial activities begin. 1997 Permit,
21 Sections A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54) and X(B).
22

23 77. The SWPPP must identify and evaluate sources of pollution associated
24 with industrial activities that may affect the quality of stormwater, and authorized
25 non-stormwater discharges from the facility. 1997 Permit, Section A(2); 2015 Permit,
26 Section X(G).
27

28 78. The SWPPP must identify and describe site-specific BMPs to reduce or

1 prevent pollutants associated with industrial activity in storm water and authorized
2 non-stormwater discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H).

3 79. The SWPPP must also include BMPs that achieve pollutant discharge
4 reductions attainable via BAT and BCT. 1997 Permit, Order Section A(2); 2015
5 Permit, Section I(D) (Finding 32), Section X(C).

6
7 80. The SWPPP must include: i) a narrative description and summary of all
8 industrial activity, potential sources of pollution, and potential pollutants; ii) a site
9 map indicating the storm water conveyance system, associated points of discharge,
10 direction of flow, areas of actual and potential pollutant contact, including the extent
11 of pollution-generating activities, nearby water bodies, and pollutant control
12 measures; iii) a description of storm water management practices; iv) a description of
13 the BMPs to be implemented to reduce or prevent pollutants in storm water discharges
14 and authorized non-storm water discharges; v) the identification and elimination of
15 non-storm water discharges; vi) identify and locate where materials are being shipped,
16 received, stored, handled, as well as typical quantities of such materials and the
17 frequency with which they are handled; vii) a description of dust and particulate
18 generating activities; and viii) a description of individuals and their current
19 responsibility for developing and implementing the SWPPP. 1997 Permit, Section
20 A(1)-(10); 2015 Permit, Section X.

21 81. The 2015 Permit further requires certain SWPPP enhancements,
22 including a more comprehensive assessment of potential pollutant sources, including a
23 COMPLAINT

1 specific consideration of all 303(d) listed impairments within the applicable watershed
2 when conducting pollutant source assessments, and more specific BMP descriptions.
3 *See e.g.* 2015 Permit, Section X(G)(2)(a)(ii).
4

5 82. The objectives of the SWPPP are to: i) identify and evaluate sources of
6 pollutants associated with industrial activities that may affect the quality of storm
7 water discharges; ii) to identify, design and implement site-specific BMPs to prevent
8 the exposure of pollutants to storm water; and iii) to reduce or prevent the discharge
9 of polluted storm water from industrial facilities. 1997 Permit, Section A(2); 2015
10 Permit, Section X.
11

12 83. To ensure compliance, the SWPPP must be evaluated and revised as
13 necessary. *See* 1997 Permit Sections A(9)-(10); *see also* 2015 Permit § X(B).
14
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16 84. Failure to develop or implement an adequate SWPPP (or revise an
17 existing SWPPP, as necessary) constitutes an independent Permit violation. *See* 2015
18 Permit, Fact Sheet, Section I(1).
19

20 85. The Permit also requires that the discharger conduct an annual
21 comprehensive site compliance evaluation that includes a review of all visual
22 observation records, inspection reports and sampling analysis data, a visual inspection
23 of all potential pollutant sources for evidence of, or the potential for, pollutants
24 entering the drainage system, a review and evaluation of all BMPs to determine
25 whether the BMPs are adequate, properly implemented and/or maintained, or whether
26 additional BMPs are needed, and a visual inspection of equipment needed to
27
28

1 implement the SWPPP. 1997 Permit, Sections A(9)(a)-(c); 2015 Permit, Sections
 2 XV(A)-(G).

3 86. Section A(9)(d) of the 1997 Permit requires that the discharger submit an
 4 evaluation report that includes an identification of personnel performing the
 5 evaluation, date(s) of the evaluation(s), necessary SWPPP revisions, a schedule for
 6 implementing SWPPP revisions, any incidents of non-compliance and the corrective
 7 actions taken, and a certification that the discharger is in compliance with the Permit.
 8 1997 Permit; Section A(9)(d)(i)-(vi). If certification cannot be provided, the
 9 discharger must explain in the evaluation report why the facility is not in compliance.
 10 1997 Permit, Section A(9)(d). The evaluation report shall be submitted as part of the
 11 Annual Report specified in Section B(14) of the Permit. 1997 Permit, Section
 12 A(9)(d).
 13
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17 **E. The Permit's Monitoring and Reporting Requirements.**
 18

19 87. The 1997 Permit required facility operators to develop and implement a
 20 monitoring and reporting program ("M&RP") when industrial activities begin at the
 21 facility. 1997 Permit, Sections B(1)-(2) and E(3). The 2015 Permit also requires
 22 implementation of an M&RP. 2015 Permit, Sections X(I) and XI.
 23

24 88. The objectives of the M&RP are to inform discharges about the
 25 effectiveness of BMPs designed in the planning phase and implemented on the
 26 ground. Where data and information from any review of an M&RP component
 27 indicates that BMPs are not adequate to prevent or reduce pollutants in storm water
 28

1 discharges (e.g. exceeding Benchmark or NALs numeric limits), permittees have an
2 obligation to re-design BMPs and/or improve BMP implementation as necessary to
3 ensure that storm water discharges are in compliance with the Permit's Discharge
4 Prohibitions, Effluent Limitations and Receiving Water Limitations. *See* 1997 Permit,
5 Section B(2); *see also* 2015 Permit, Sections X(I) and XI.
6

7
8 89. The 2015 Permit requires facility operators to visually observe, monitor
9 and sample storm water discharges to ensure that the facility is complying with its
10 obligations under the Permit. 2015 Permit, Sections I(J) (Findings 55-56) and XI.
11

12 90. Dischargers must conduct monthly visual observations of storm water
13 discharges as part of a legally adequate M&RP. 1997 Permit, Section B(4)(a); 2015
14 Permit, Section XI(A).
15

16 91. Dischargers must observe and document the presence of any floating and
17 suspended materials, oil and grease, discolorations, turbidity, or odor in a discharge,
18 and the source of any pollutants in storm water discharges from the facility.
19

20 92. Dischargers are required to maintain detailed records of each
21 observation, and any corrective actions taken to reduce or prevent pollutants from
22 contacting storm water discharges. *See* 1997 Permit, Section B(4)(c); *see also* 2015
23 Permit, Section XI(A)(3).
24

25
26 93. The Permit requires dischargers to revise the SWPPP as necessary to
27 ensure that BMPs are effectively reducing and/or eliminating pollutants from entering
28 surface waters. 1997 Permit, Section B(4)(c), 2015 Permit, Section XI(B)(1).

1 94. The Permit requires dischargers to visually observe and collect samples
2 of storm water discharges from each location where storm water is discharged. 1997
3 Permit, Sections B(5) and B(7); 2015 Permit, Section XI(B)(4).

4
5 95. Section B(5)(a) of the 1997 Permit required dischargers to collect storm
6 water samples during the first hour of discharge from the first storm event of the Wet
7 Season and at least one other storm event in the Wet Season. All storm water
8 discharge locations must be sampled. Facility operators that do not collect samples
9 from the first storm event of the Wet Season are still required to collect samples from
10 two other storm events of the Wet Season and must explain in the Annual Report why
11 the first storm event was not sampled.
12

13
14 96. Section B(5)(b) required that sampling conducted pursuant to the 1997
15 Permit occur during scheduled facility operating hours that are preceded by at least
16 three (3) working days without storm water discharge.
17

18
19 97. Section XI(B)(1) of the 2015 Permit requires sampling from a Qualifying
20 Storm Event (“QSE”), which is a precipitation event that produces a discharge for at
21 least one drainage area and is preceded by forty-eight (48) hours with no discharge
22 from any drainage area.
23

24 98. Dischargers are required to collect samples of storm water within 4 hours
25 of the start of facility operations if the QSE began within the previous 12-hour period,
26 e.g. for storms with discharges that begin during the night for facilities with day-time
27 operations. 2015 Permit, Section XI(B)(5)(b).
28

1 99. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and
2 analyze storm water samples from two (2) QSEs within the first half of each reporting
3 year (July 1 to December 31), and two (2) QSEs within the second half of each
4 reporting year (January 1 to June 30).
5

6 100. Section XI(B)(11) of the 2015 Permit, among other requirements,
7 provides that permittees must submit all sampling and analytical results for all
8 samples via SMARTS within thirty (30) days of obtaining data results.
9

10 101. The Permit requires dischargers to analyze each sample for pH, specific
11 conductance ("SC"), TSS, and either total organic carbon ("TOC") or Oil & Grease
12 ("O&G"). 1997 Permit, Section B(5)(c)(i); 2015 Permit, Sections XI(B)(6)(a)-(b).
13

14 102. The Permit also requires dischargers to analyze each sample for site-
15 specific toxic chemicals and other pollutants associated with the specific industrial
16 operations at the facility. 1997 Permit, Section B(5)(c)(ii); 2015 Permit, Section
17 XI(B)(6)(c).
18

19 103. Section B(14) of the 1997 Permit required that dischargers submit an
20 Annual Report to the applicable Regional Board by July 1 of each year. The Annual
21 Report must include a summary of visual observations and sampling results, an
22 evaluation of the visual observations and sampling and analysis results, laboratory
23 reports, the annual comprehensive site compliance evaluation report specified in
24 Section A(9), an explanation of why a facility did not implement any activities
25 required, and the records specified in Section B(13)(i).
26
27
28

104. Section XVI of the 2015 Permit requires dischargers to submit a Compliance Checklist with each Annual Report that indicates whether the discharger complies with, and has addressed all applicable requirements of the 2015 Permit, an explanation for any noncompliance of requirements within the reporting year, as indicated in the Compliance Checklist, an identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year, and the date(s) of the Annual Evaluation.

V. STATEMENT OF FACTS

A. The Facility's Permit Coverage.

105. City first filed a Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") on March 17, 1992 ("1992 NOI"). City filed a second NOI on June 23, 1997 ("1997 NOI"), and a third on June 17, 2015 ("2015 NOI").

106. All three NOIs on file with the State certify that the Facility is located at 1300 West Laurel Avenue in Lompoc.

107. The Facility's Waste Discharger Identification No. is 3 42I001464.

108. The 1992 NOI lists the Facility's SIC as 9199 ("Yard and Garage").

109. The 1997 and 2014 NOIs list the Facility's SIC as 4212 ("Local Trucking Without Storage).

110. The Facility's 2015 SWPPP, publicly available on the SMARTS database, was submitted by Dirk Ishiwata on June 25, 2015. Mr. Ishiwata filed a an

1 amendment to the 2015 SWPPP on December 28, 2016, making revisions to Section
2 3.1.5a on page 24, which added “TSS and COD control BMPs, including silt fence,
3 rumble strips, good housekeeping measures.”
4

5 111. CLAWS is informed and believes, and thereon alleges, that the Facility’s
6 2015 SWPPP along with the 2016 SWPPP Amendment and any updates made as a
7 result of the Facility’s completion of Exceedance Response Actions constitute the
8 Facility’s current SWPPP.
9

10 112. CLAWS is informed and believes, and thereon alleges, that the Facility’s
11 2015 SWPPP was prepared following the 2014 SWPPP Template provided on the
12 California Stormwater Quality Association Stormwater Best Management Practice
13 Handbook Portal: Industrial and Commercial.
14
15

16 **B. Facility Details**

17 113. CLAWS is informed and believes, and thereon alleges, that the property
18 is owned by the City of Lompoc and is being operated by the City of Lompoc.
19

20 114. CLAWS is informed and believes, and thereon alleges, that the Facility is
21 approximately 7 acres.
22

23 115. CLAWS is informed and believes, and thereon alleges, that the Facility is
24 composed entirely of impermeable surfaces.
25

26 116. CLAWS is informed and believes, and thereon alleges, that the Facility
27 operates seven days a week, from 6:30 to 16:00.
28

117. The Facility SWPPP describes activities occurring on site to include:

1 Electric Department - vehicle storage; Purchasing - receiving goods and storage;
2 Facilities Management - general facility repair of equipment and materials; Streets
3 Department - storage of road base and asphalt /concrete materials and machinery,
4 striping machine, paint, etc.; Parks Department - propagation and storage of plants,
5 and plant materials; Fleet Department - vehicle repair, wash, and garage services;
6 Urban Forestry - storage of trees, tree planting, and trimming equipment; Transit -
7 vehicle storage and bus wash.” SWPPP, Section 2.1.2 at pg. 10.
8
9

10 118. The Facility SWPPP indicates that the site map includes “[l]ocations of
11 all material stockpiles [and] storage areas.” SWPPP, Section 2.3.1 at pg. 12.
12

13 119. CLAWS is informed and believes, and thereon alleges, that the Facility
14 has an elevation of 201 feet above sea level, and is approximately ten (10) miles from
15 the Pacific Ocean.
16

17 **C. Facility Discharge Locations**

18

19 120. CLAWS is informed and believes, and thereon alleges, that the Facility
20 has three drainage discharge points: 1) Drainage Area 1 is located on the south
21 east/south central portion of the Yard and flows to the street and then into an MS4
22 owned and operated by the City; 2) Drainage Area 2 is located in the southwest
23 portion of the yard and flows to a drain inlet within the Facility boundaries that
24 connects directly to the City’s MS4; and 3) Drainage Area 3 is located on the
25 southwest portion of the yard and flows to a drain inlet within the Facility boundaries
26 that connects directly to the City’s MS4.
27
28

121. CLAWS is informed and believes, and thereon alleges, that the Facility's three discharge points (as identified in paragraph 117) flow from the MS4 into to San Miguelito Creek ("Creek") at the V Street Channel, which flows to the Santa Ynez River ("River"), where it runs for approximately ten (10) miles before entering the Santa Ynez River Estuary ("Estuary") and into the Pacific Ocean ("Ocean") at the Vandenberg State Marine Reserve. Collectively, the Creek, River, Estuary and Ocean constitute the Facility's Receiving Waters.

122. On June 17, 2015, the City (via the signature of Dirk Ishiwata, Fleet, Parks and Communications Superintendent on an NOI) certified that the Facility's Receiving Waters are the Santa Ynez River.

VI. VIOLATIONS OF THE CLEAN WATER ACT AND PERMIT

123. CLAWS is informed and believes, and herein alleges, that in the years since enrolling in the Permit, the City has consistently failed to carry out its obligations under the Permit and Act.

124. As discussed in further detail below, CLAWS alleges that the Facility is in ongoing violation of the Permit and/or a reasonable trier of fact would find a continuing likelihood of a recurrence in intermittent or sporadic violations.

125. The Facility's violations span both the 1997 Permit and 2015 Permit.

126. City is subject to civil penalties for all violations of the Clean Water Act detailed herein occurring since April 26, 2012.

127. CLAWS is informed and believes, and herein alleges, that the Facility's

1 industrial activities and areas of industrial activity are pollutant sources.

2 128. CLAWS is informed and believes, and herein alleges, that the Facilities
3 industrial activities include, but may not be limited to those detailed in its SWPPP (as
4 summarized above in paragraph 117).
5

6 **A. City Has Failed and Continues to Fail to Prepare, Implement and**
7 **Update an Adequate SWPPP.**

8 129. CLAWS is informed and believes, and thereon alleges, that the current
9 SWPPP does not include all areas of industrial activity at the Facility.
10

11 130. CLAWS is informed and believes, and thereon alleges, that the Facility
12 SWPPP does not adequately describe all industrial processes at the Facility, including
13 acknowledging activities for which additional SIC codes are necessary.
14

15 131. CLAWS is informed and believes, and thereon alleges, that the site map
16 included in the SWPPP does not adequately identify all areas of industrial activity.
17

18 132. CLAWS is informed and believes, and thereon alleges, that the site map
19 included in the current SWPPP does not include all locations of structural control
20 measures that affect storm water discharges.
21

22 133. CLAWS is informed and believes, and thereon alleges, that industrial
23 activities occur throughout the Facility outdoors without adequate cover to prevent
24 storm water exposure to pollutant sources.
25

26 134. CLAWS is informed and believes, and thereon alleges, that because the
27 current SWPPP fails to describe all of the Facility's industrial activities, the Facility's
28

1 current SWPPP also fails to describe all of the significant materials and processes that
2 are related to industrial activities.

3 135. CLAWS is informed and believes, and thereon alleges, that because all
4 significant materials have not been identified, the current SWPPP fails to describe the
5 locations where materials are stored, received, shipped, and handled, as well as the
6 typical quantities of such materials and the frequency with which they are handled at
7 the Facility.
8

9 136. CLAWS is informed and believes, and thereon alleges, that the current
10 SWPPP failed and continues to fail to adequately describe pollutants associated with
11 industrial activity.
12

13 137. The current SWPPP describes only one potential pollutant source at
14 Table 2.1.
15

16 138. CLAWS is informed and believes, and thereon alleges, that the current
17 SWPPP failed and continues to fail to adequately assess pollutants associated with
18 industrial activity. For example, the current SWPPP fails to describe specific
19 pollutants that contribute to the Facility's consistent exceedances of Benchmarks for
20 TSS and specific conductance.
21

22 139. CLAWS is informed and believes, and thereon alleges, that pollutants
23 associated with the Facility's industrial activities include, but are limited to: pH-
24 affecting substances, sodium, metals, such as iron and aluminum; COD, BOD, TSS,
25 gasoline and diesel fuels, coolants/antifreeze, Total Kjeldahl Nitrogen (organic
26
27
28

1 nitrogen + ammonia nitrogen, "TKN") and Nitrates plus Nitrites ("N+N"), O&G,
2 sawdust, wood chips, trash and debris, asphalt and concrete (and their various
3 constituent elements), various pesticides and fertilizers, soap dust and residue,
4 solvents, and hydraulic fluids.

6 140. CLAWS is informed and believes, and thereon alleges, that the current
7 SWPPP failed and continues to fail to describe adequate BMPs to reduce or prevent
8 pollutants in the Facility's discharges.
9

10 141. CLAWS is informed and believes, and thereon alleges, that the current
11 SWPPP failed and continues to fail to include an adequate assessment of potential
12 pollutant sources at the Facility, including pollutants for which impairments to the
13 Receiving Waters exist.
14
15

16 142. CLAWS is informed and believes, and thereon alleges, that the current
17 SWPPP failed and continues to fail to include an adequate assessment of the Facility's
18 BMPs corresponding to potential pollutant sources and associated pollutants.
19

20 143. CLAWS is informed and believes, and thereon alleges, that the current
21 SWPPP failed and continues to fail to include an adequate description of the Facility's
22 BMPs, and that any modifications made as a result of the Facility's completion of
23 Exceedance Response Actions has not adequately remedied these ongoing failures.
24
25

26 144. CLAWS is informed and believes, and thereon alleges, that the current
27 SWPPP failed and continues to fail to adequately analyze the effectiveness of the
28 BMPs implemented at the Facility.

1 145. CLAWS is informed and believes, and thereon alleges, that the Facility
2 owner and operator has failed and continues to fail to adequately conduct annual site
3 evaluations as required by the Permit. Without adequate annual site inspection, the
4 Facility has failed and continues to fail to make adequate revisions to its SWPPP.
5

6 146. CLAWS is informed and believes, and thereon alleges, that the current
7 SWPPP failed and continues to fail to adequately describe an effective and legally
8 adequate M&RP.
9

10 147. CLAWS is informed and believes, and thereon alleges, that the current
11 SWPPP failed and continues to fail to include required parameters in its sampling and
12 monitoring plan, including but not limited to: i) parameters required as a result of
13 impairments in Receiving Waters; and ii) site-specific parameters required pursuant to
14 1997 Permit, Section B(5)(c)(ii) and 2015 Permit, Section XI(B)(6)(c).
15
16

17 **B. City Has Failed and Continues to Fail to Implement BMPs that**
18 **Achieve BAT/BCT.**

19 148. On information and belief, Plaintiff alleges that the storm water sampling
20 at the Facility demonstrates that the Facility's storm water discharges contain
21 concentrations of pollutant above Benchmark and NAL limits for multiple pollutants.
22

23 149. On information and belief, Plaintiff alleges that the storm water sampling
24 at the Facility evidences a consistent pattern and practice at the Facility of discharging
25 pollutants in storm water that exceed Benchmark and NAL limits.
26
27

28 150. On information and belief, Plaintiff alleges that the Facility has failed

1 and continues to fail to reduce or prevent pollutants associated with industrial activity
2 in storm water discharges through implementation of BMPs that achieve BAT/BCT as
3 required by the Act and Permit.
4

5 151. The data summarized in Exhibit A at Table 1 provide compelling
6 evidence that the Facility has failed, is failing and will continue to fail to implement
7 BMPs that prevent the exposure of pollutant to storm water, and to prevent the
8 discharges of polluted storm water from the Facility.
9

10 152. The data summarized in Exhibit A at Table 1 provide compelling
11 evidence that the Facility has failed, is failing and will continue to fail to develop or
12 implement BMPs that achieve compliance with the BAT/BCT mandates.
13

14 153. CLAWS is informed and believes, and thereon alleges, that without
15 properly identifying all industrial activities at the Facility in the SWPPP, the Facility
16 cannot and has not developed adequate BMPs.
17

18 154. CLAWS is informed and believes, and thereon alleges, that without
19 properly identifying and assessing potential sources of pollutants and significant
20 materials, and without describing specific pollutants associated with industrial
21 activity, the Facility cannot and has not implemented adequate BMPs.
22

23
24 **C. Ongoing Violations of the Permit's M&RP Requirements.**
25

26 155. City has been and continues to conduct operations at the Facility with a
27 legally inadequate M&RP.
28

156. Information available to CLAWS indicates that the Facility has failed

1 and continues to fail to collect and analyze qualifying storm events as required by the
2 Permit. For example, on information and belief, CLAWS alleges that City did not
3 take a single sample in 2013, a year during which: i) three samples were collected by
4 neighboring facilities operated by the Defendant; and ii) storm data from the County
5 of Santa Barbara demonstrate a minimum of 12 qualified storm events (5 of which
6 took place during normal scheduled operations).
7

8
9 157. City's failure to conduct sampling and monitoring as required by the
10 Permit demonstrates that it has failed to develop, implement, and/or revise a legally
11 adequate M&RP, and is therefore violating the Act.
12

13 158. City has failed and continues to fail to analyze samples for all parameters
14 required by the Permit.
15

16 159. On information and belief, CLAWS alleges that City has failed and
17 continues to fail to submit Annual Reports that comply with the Permit's reporting
18 requirements. City has falsely certified that: (1) a complete Annual Comprehensive
19 Site Compliance Evaluation was done pursuant to the Permit; (2) the SWPPP's BMPs
20 address existing potential pollutant sources and additional BMPs are not needed; and
21 (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to
22 achieve compliance.
23
24

25 160. Plaintiff is informed and believes, and thereupon alleges, that all of the
26 violations alleged in this Complaint are ongoing and continuing.
27
28

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

**Defendant's Discharges of Contaminated Storm Water in
Violation of the Permit Effluent Limitations and the Act
(33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))**

161. CLAWS re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

162. CLAWS is informed and believes, and thereon alleges, that Defendant has failed and continues to fail to reduce or prevent pollutants associated with industrial activities through the implementation of BMPs at the Facility that achieve BAT/BCT.

163. CLAWS is informed and believes, and thereon alleges, that discharges of storm water containing levels of pollutants that do not achieve compliance with BAT/BCT standards from the Facility occur every time storm water is discharged.

164. Defendant's failure to develop and/or implement BMPs that achieve the pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation of the Storm Water Permit and the Act. *See* 1997 Permit, Effluent Limitation B(3); *see also* 2015 Permit, Section I(D) (Finding 32), Section V(A); *see also* 33 U.S.C. § 1311(b).

165. Defendant violates and will continue to violate the Permit's Effluent Limitations each and every time storm water containing levels of pollutants that do not achieve BAT/BCT standards discharges from the Facilities.

166. Each and every violation of the Permit's Effluent limitations is a separate

1 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

2 167. Defendants' violations of the Permit's Effluent Limitations and the Act are
3 ongoing and continuous.

4
5 168. By committing the acts and omissions alleged above, City is subject to an
6 assessment of civil penalties for each and every violation of the Act occurring from
7 April 26, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33
8 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

9
10 169. An action for injunctive relief is authorized by section 505(a) of the Act,
11 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
12 would irreparably harm Plaintiff and the citizens of the State of California, for which
13 harm CCAT has no plain, speedy, or adequate remedy at law.

14
15
16 170. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
17 because an actual controversy exists as to the rights and other legal relations of the
18 Parties.

19
20 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
21 hereafter.

22
23 **SECOND CAUSE OF ACTION**

24 **Defendant's Discharges of Contaminated Storm Water in**
25 **Violation of the Permit's Receiving Water Limitations and the Act**
(33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))

26 171. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
27 fully set forth herein.
28

1 172. CLAWS is informed and believes, and thereon alleges, that discharges of
2 storm water containing levels of pollutants that adversely impact human health and/or
3 the environment from the Facility occur each time storm water discharges from the
4 Facility.
5

6 173. CLAWS is informed and believes, and thereon alleges, that storm water
7 containing levels of pollutants that cause or contribute to exceedances of water quality
8 standards has been discharged and continues to be discharged from the Facility each
9 time stormwater is discharged from the Facility.
10

11 174. Plaintiff is informed and believes, and thereupon alleges, that since at least
12 April 26, 2012, Defendants have discharged polluted storm water from the Facility
13 causing or contributing to the violation of the applicable WQS and that adversely
14 impact human health or the environment in violation of the Receiving Water
15 Limitation of the General Permit.
16

17 175. Every day, since at least April 26, 2012, that Defendant has discharged
18 polluted storm water from the Facility in violation of the Permit is a separate and
19 distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations
20 are ongoing and continuous.
21

22 176. Each and every violation of the Storm Water Permit's Receiving Water
23 Limitations is a separate and distinct violation of section 301(a) of the Act, 33 U.S.C.
24 § 1311(a).
25

26 177. By committing the acts and omissions alleged above, City is subject to an
27
28

1 assessment of civil penalties for each and every violation of the Act occurring from
2 April 26, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33
3 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
4

5 178. An action for injunctive relief is authorized by Act section 505(a),
6 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
7 would irreparably harm Plaintiff and the citizens of the State of California, for which
8 CLAWS has no plain, speedy, or adequate remedy at law.
9

10 179. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
11 because an actual controversy exists as to the rights and other legal relations of the
12 Parties.
13

14 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
15 hereafter.
16

17 **THIRD CAUSE OF ACTION**

18 **Defendant's Failure to Prepare, Implement, Review, and Update**
19 **an Adequate Storm Water Pollution Prevention Plan**
20 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

21 180. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
22 fully set forth herein.
23

24 181. Defendant has not developed and implemented an adequate SWPPP for
25 the Facility.
26

27 182. Each day since April 26, 2012, that Defendant did not develop, implement
28 and update an adequate SWPPP for the Facility is a separate and distinct violation of

1 the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

2 183. Defendant has been in violation of the SWPPP requirements every day
3 since April 26, 2012. Violations continue each day that an adequate SWPPP for the
4 Facility is not developed and fully implemented.
5

6 184. By committing the acts and omissions alleged above, City is subject to an
7 assessment of civil penalties for each and every violation of the Act occurring from
8 April 26, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33
9 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
10
11

12 185. An action for injunctive relief is authorized by Act section 505(a),
13 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
14 would irreparably harm Plaintiff and the citizens of the State of California, for which
15 harm CLAWS has no plain, speedy, or adequate remedy at law.
16

17 186. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
18 because an actual controversy exists as to the rights and other legal relations of the
19 Parties.
20

21 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
22 hereafter.
23

24 **FOURTH CAUSE OF ACTION**
25 **Defendant's Failure to Develop and Implement an**
26 **Adequate Monitoring and Reporting Program**
27 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

28 187. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if

1 fully set forth herein.

2 188. Defendant has not developed and implemented an adequate monitoring
3 and reporting program for the Facility.
4

5 189. Each day since April 26, 2012, that Defendant has not developed and
6 implemented an adequate monitoring and reporting program for the Facility in
7 violation of the General Permit is a separate and distinct violation of the General
8 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite
9 collection/monitoring and analytical results are ongoing and continuous.
10
11

12 190. By committing the acts and omissions alleged above, City is subject to an
13 assessment of civil penalties for each and every violation of the Act occurring from
14 April 26, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33
15 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
16

17 191. An action for injunctive relief is authorized by Act section 505(a),
18 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
19 would irreparably harm Plaintiff and the citizens of the State of California, for which
20 harm CLAWS has no plain, speedy, or adequate remedy at law.
21
22

23 192. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
24 because an actual controversy exists as to the rights and other legal relations of the
25 Parties.
26

27 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
28 hereafter.

FIFTH CAUSE OF ACTION

**Defendant's Failure to Accurately Certify Compliance in Annual Reports in
Violation of the Permit and the Act
(33 U.S.C. §§ 1311, 1342, 1365(a) and 1365(f))**

193. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

194. Defendant has not accurately certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least April 26, 2012.

195. Each day since at least April 26, 2012, that Defendant does not accurately certify compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of the General Permit's certification requirement each day it maintains an inaccurate certification of compliance with the General Permit.

196. By committing the acts and omissions alleged above, City is subject to an assessment of civil penalties for each and every violation of the CWA occurring from April 26, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

197. An action for injunctive relief is authorized by Act section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm CLAWS has no plain, speedy, or adequate remedy at law.

RELIEF REQUESTED

a. Declare Defendant(s) to have violated and to be in violation of the Act as alleged herein;

b. Enjoin Defendant(s) from discharging polluted storm water from the Facility unless authorized by the Permit;

c. Enjoin Defendant(s) from further violating the substantive and procedural requirements of the Permit;

d. Order Defendant(s) to immediately implement storm water pollution control technologies and measures that are equivalent to BAT or BCT and prevent pollutants in the Facility's storm water from contributing to violations of any water quality standards;

e. Order Defendant(s) to comply with the Permit's monitoring and reporting requirements, including ordering supplemental monitoring to compensate for past monitoring violations;

1 f. Order Defendant(s) to prepare a SWPPP consistent with the Permit's
2 requirements and implement procedures to regularly review and update the SWPPP;

3 g. Order Defendant(s) to provide Plaintiff with reports documenting the
4 quality and quantity of their discharges to waters of the United States and their efforts
5 to comply with the Act and the Court's orders;

6 h. Order Defendant(s) to pay civil penalties of up to \$37,500 per day per
7 violation for each violation of the Act since March 21, 2012, up to and including
8 November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015
9 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and
10 40 C.F.R. §§ 19.1 - 19.4;

11 i. Order Defendant(s) to take appropriate actions to restore the quality of
12 waters impaired or adversely affected by their activities;


13 j. Award Plaintiff's costs (including reasonable investigative, attorney,
14 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.
15 § 1365(d); and,

16 k. Award any such other and further relief deemed appropriate by the
17 Court.

18 Dated: JUNE 30, 2017

Respectfully submitted,

19 By:

20 
21 _____
22 Jesse C. Swanhuysen
23 Attorney for Plaintiff

NOTICE OF INTENT TO SUE
LOMPOC CORPORATE YARD

April 26, 2017

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bob Lingl
Mayor
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

Stacy Haddon
City Clerk
City of Lompoc
PO Box 8001
Lompoc, CA 93438-8001

Stacy Lawson
Senior Environmental Coordinator
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

Dirk Ishiwata,
Facilities, Fleet and Park Maintenance Manager
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution Control Act

To Whom It May Concern:

I am writing on behalf of the Committees for Land, Air, Water and Species ("CLAWS") regarding violations of the Clean Water Act¹ ("CWA" or "Act") and California's General Industrial Storm Water Permit² occurring at the Lompoc Corporate Yard facility owned and operated by City of Lompoc ("Lompoc" or "City") at 1300 West Laurel Avenue in Lompoc California ("Yard" or "Facility"). This communication ("Notice Letter") is prepared pursuant to the CWA, 33 U.S.C. §§ 1365(a) and (b), and is sent to you and Lompoc as the responsible owners and/or operators of the Facility in order to: 1) detail violations of the Act and General Industrial Permit occurring at the Yard; and b) provide formal notice that CLAWS intends to file a federal enforcement action against the City for violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342.

¹ Federal Water Pollution Control Act 33 U.S.C. § 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the General Industrial Permit in effect was Order No. 97-03-DWQ ("1997 Permit"), which as of July 1, 2015, was superseded by Order No. 2014-0057-DWQ ("2015 Permit"). CLAWS may herein refer to the two versions interchangeably as the "General Industrial Permit" or "Permit." As explained herein, the 2015 Permit and the 1997 Permit contain the same fundamental requirements and implements the same statutory mandates.

NOTICE OF INTENT TO SUE
LOMPOC CORPORATE YARD

I. Background

A. Committees for Land, Air, Water and Species

CLAWS is a non-profit public benefit corporation organized under the laws of California and operating in Santa Barbara County, California. Incorporated in 2014, CLAWS is a bold advocate for social and environmental justice. The organization's mission is, *inter alia*, to advocate for and protect the people and natural resources of California's Central Coast region. The organization works to achieve its goals through a synergy of education, outreach, organizing, litigation and regulatory programs that ensure the preservation, protection, and defense of the Central Coast region's natural and human communities.

Where necessary to achieve its objectives, CLAWS directly initiates enforcement actions under the Act on behalf of itself and its members. CLAWS' members use the Pacific Ocean, connected waterways and beaches to fish, surf, swim, sail, SCUBA and free dive, kayak, bird watch, view wildlife, hike, bike, walk, and run. The unlawful discharge of pollutants from the Facility into local waters impairs the ability of CLAWS' members to use and enjoy these waters. Thus, CLAWS' interests have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Act and Permit.

B. The Clean Water Act

The objectives of the Act are to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the Act prohibits the discharge of pollutants from any point source into waters of the United States except in compliance with other requirements of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342(p), 40 C.F.R. § 122.26(c)(1). In California, the United States Environmental Protection Agency ("EPA") has delegated authority to issue NPDES permits to the State Water Resources Control Board ("State Board"). 33 U.S.C. §§ 1342(b), (d). The Central Coast Regional Water Quality Control Board ("Regional Board" or "RB3") is responsible for issuance and enforcement of the Permit in Region 3, which covers the Facility.

Section 505 authorizes citizens to file suit in federal court against facilities alleged to be in violation of the Act and/or related permits. 33 U.S.C. § 1365(a). Section 505(b) of the Act requires citizens to give notice to alleged violators at least sixty (60) days before initiating civil action under Section 505(a). 33 U.S.C. § 1365(b). Notice must be given to the alleged violator(s), the EPA Administrator, the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur, and, if the violator is a corporation, the registered agent of the corporation. 40 C.F.R. § 135.2(a)(1).

Unless Lompoc takes appropriate action to remedy ongoing violations of the Act, CLAWS will file suit in U.S. District Court following the expiration of the 60-day notice period on June 26, 2017. In that action, CLAWS will seek civil penalties, injunctive relief, fees and costs. Lompoc is subject to civil penalties for all violations of the Act occurring at the Facility

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since April 26, 2012.³ Each separate violation of the Act subjects the violator to a penalty of up to \$51,570 per day for violations occurring after November 2, 2015; and up to \$37,500 per day per violation for violations occurring prior to and including November 2, 2015. *See* 33. U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4.

C. The Facility

According to filings with the State of California, the Waste Discharger Identification (“WDID”) number under which the Yard is registered is 3 42I001464. The Notices of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”) filed with the State Board and Regional Board on June 23, 1997 and June 17, 2015, along with various other Facility filings (e.g. Annual Report 2013-14), certifies that the Facility is categorized under the Standard Industrial Classification (“SIC”) 4212 and the regulated industrial activity is “Local Trucking Without Storage.” The NOI filed on March 17, 1992 certifies that the Facility is a “Yard and Garage” categorized under SIC code 9199, with industrial activities including material handling, material storage, vehicle maintenance and vehicle storage.

According to information available to CLAWS, the Facility is approximately 7 acres, 93% of which is impervious, and virtually the entire site is exposed to storm water. “The Corporate Yard operates seven (5) days a week, from 6:30 to 16:00.”⁴ The City’s NOI describes the Facility’s industrial operations as “consist[ing] of all activities required to operate a Corporate Yard.”⁵ According to information and belief, the specific industrial activities occurring onsite include, but may not be limited to, the following:

- Electric Department - vehicle storage
- Purchasing - receiving goods and storage
- Facilities Management - general facility repair of equipment and materials
- Streets Department - storage of road base and asphalt /concrete materials and machinery, striping machine, paint, etc.
- Parks Department - propagation and storage of plants, and plant materials
- Fleet Department - vehicle repair, wash, and garage services.
- Urban Forestry - storage of trees, tree planting, and trimming equipment
- Transit - vehicle storage and bus wash
- Police - trailer and specialty equipment storage.

The Facility is also the site of Leaking Underground Storage Tank (LUST) Cleanup Site Case No. 3092.

³ Lompoc is liable for violations of both the 1997 Permit and ongoing violations of the 2015 Permit. *See Illinois v Outboard Marine, Inc.* 680 F.2d 473, 480-81 (7th Cir. 1982) (granting relief for violations of an expired permit); *Sierra Club v Aluminum Co of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act’s legislative intent and public policy favor allowing penalties for violations of expired permits); *Pub. Interest Research Group of N.J. v Carter Wallace, Inc.* 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitations of an expired permit, when transferred to a newly issued permit, are viewed as currently in effect for enforcement purposes).

⁴ City of Lompoc Corporate Yard Storm Water Pollution Prevention Plan (June 2015), Section 2, para. 2.1.2.

⁵ *Id.* at para. 2.2.

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D. Receiving Waters

According to the Facility's Storm Water Pollution Prevention Plan ("SWPPP"), "Lompoc is located at the downstream end of the Santa Ynez River's watershed. This watershed is very large and its uses primarily include open space, agriculture, and a limited amount of rural and urban development. Lompoc is also located on the downstream end of San Miguelito Creek, which flows from Santa Barbara County's jurisdiction into Lompoc on its south side, travels through Lompoc in a concrete trapezoidal channel and joins the Santa Ynez River just west of Lompoc. Lompoc's primary storm drains and its Wastewater Reclamation Plant discharge into San Miguelito Creek. For the purposes of [the Permit,] the City's receiving water is San Miguelito Creek.

"San Miguelito Creek's Watershed [...] is rural in nature. The largest influences in Miguelito Canyon are Celite's diatomaceous earth mining operation in the lower portion of the watershed and a number of private cattle ranches in the upper reaches of the watershed. There are also a limited number of single-family homes on larger lots at the mouth of Miguelito Canyon and a rural County Park in its lower reaches. Vandenberg Air Force Base property adjoins the watershed. The Miguelito Creek Watershed is almost exclusively within the County of Santa Barbara's jurisdiction. Within the County's jurisdiction, the Creek is unlined. When it reaches the valley floor and the City of Lompoc, it flows into a retention basin and from there is discharged into a concrete trapezoidal channel which conveys the creek through the City of Lompoc to the Santa Ynez River. The majority of Lompoc's storm water drains into the concrete "V" Street channel at the lowest portion of the watershed, before it discharges into the Santa Ynez River."⁶

"The Yard discharges to the San Miguelito Creek at the V Street Channel,"⁷ which flows to the Santa Ynez River, where it runs for approximately ten (10) miles before entering the Santa Ynez River Estuary and into the Pacific Ocean at the Vandenberg State Marine Reserve (collectively "Receiving Waters"). According to the 2012 303(d) List of Impaired Water Bodies, the Receiving Waters are listed as impaired for chlorine, sodium, temperature and pH."⁸

The Receiving Waters are ecologically, economically, and socially significant resources on which Central Coast communities depend. The Regional Board identifies beneficial uses of the Receiving Waters and establishes water quality standards in the *Water Quality Control Plan for the Central Coast Basin* (March 2016 Edition) ("Basin Plan"). The beneficial uses of the Receiving Waters include, but may not be limited to, Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Ground Water Recharge (GWR), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Warm Fresh Water Habitat (WARM), Cold Fresh Water Habitat (COLD), Wildlife Habitat (WILD), Spawning, Reproduction and/or Early Development Habitat (SPWN), Commercial and Sport Fishing (COMM), Industrial Process Supply (PRO), Industrial Service Supply (IND), Migration of Aquatic Organisms (MIGR), Rare, Threatened, or

⁶ CITY OF LOMPOC STORM WATER MANAGEMENT PROGRAM (DRAFT)(September 2008 - September 2013) Section 1, para. 1.1.2 at page 7.

⁷ *Id.*

⁸ 2012 Integrated Report – All Assessed Waters, available at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml (last accessed on 3/31/2017).

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Endangered Species (RARE), Preservation of Biological Habitats of Special Significance (BIOL), Estuarine Habitat (EST), Shellfish Harvesting (SHELL), and Marine Habitat (MAR).

Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish and bird species, as well as macro-invertebrate and invertebrate species. The public, both tourists and residents alike, make extensive use of the Receiving Waters for water contact sports, fishing, non-contact recreational, and aesthetic opportunities, such as wildlife observation, and sunbathing. The Receiving Waters ebb and flow in the bed of San Miguelito Creek, the Santa Ynez River and the Santa Ynez Estuary. Polluted discharges from the Facility enter the Receiving Waters and are deposited on the banks, vegetation, shoreline and soils of the Creek, River and Estuary, where the water evaporates and the polluted discharges become aerosols and/or attach to particulate matter that are each entrained in the air from strong locally-prevalent winds and which then expose residents of Lompoc and the Santa Ynez Valley in the form of air pollution. Polluted discharges from the Facility expose many people to contaminants that threaten public health and welfare, and impair natural ecosystems that depend on the Receiving Waters. Polluted storm water and non-storm discharges harm the special aesthetic, economic and recreational significance the Receiving Waters have for the public, including CLAWS' members.

II. Storm Water Permitting and Enforcement

A. Storm Water Permitting

The Act prohibits any discharges of storm water associated with industrial activities (and authorized non-storm water discharges) that have not been subjected to Best Available Technology Economically Achievable ("BAT") for toxic⁹ or non-conventional pollutants, and Best Conventional Pollution Control Technology ("BCT") for conventional pollutants¹⁰ (33 U.S.C. §§ 1311(b)(2)(A), (B)). However, regulators recognize the strain that strict application of the statutory standard would impose on industry, as well as the practical challenge of defining and enforcing the standard.

Thus, rather than requiring the specific application of BAT or BCT techniques to each individual discharge of storm water, the State Board created a far more flexible program under which compliance with the terms of conditions of the General Industrial Permit serves as a proxy for compliance with the Act. *See e.g.* 1997 Permit, Finding 10. Compliance with the General Industrial Permit, therefore, constitutes compliance with the Act for purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E). Conversely, failures to comply with the Permit's terms and conditions constitute violations of the Act. *See* 1997 Permit, Section C(1); *see also* 2015 Permit, Section XXI(A).

In order to comply with the statutory BAT/ BCT mandate embodied in the Permit, operators/owners must consistently engage in a multi-prong compliance strategy. This common sense strategy includes three independent, but mutual-reinforcing actions: i) planning and design,

⁹ Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead and zinc, among others.

¹⁰ Conventional pollutants include Total Suspended Solids, Oil and Gas, pH, biochemical oxygen demand and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or non-conventional.

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ii) on-the-ground implementation, and iii) monitoring and corrective action. Each of the three prongs is a necessary condition for compliance with the Permit and Act. Without executive planning and design, a facility's staff is highly unlikely to implement BMPs that address the pollutant sources on site. Without consistent and reliable on-the-ground implementation, no amount of expert planning will prevent and reduce pollutants in stormwater discharges. And failures to collect data leaves an owner/operator without essential information about the efficacy of pollution control measures, and prevents the owner/operator from taking effective corrective actions. Compliance does necessitate that each prong be completed perfectly, but all must be consistently and sincerely pursued.

The Permit's principal mechanisms for ascertaining compliance with the Act's BAT/BCT mandate, therefore, are to require both the preparation and implementation of a comprehensive SWPPP that accurately evaluates the site's pollutant sources and describes Best Management Practices ("BMPs") designed to prevent and reduce polluted runoff; and the development and implementation of a Monitoring and Reporting Program ("M&RP") that emphasizes the collection and analysis of stormwater discharges to inform owners/operators regarding BMP effectiveness.

Specifically, the Permit requires facility owners/operators to adhere to the following requirements: i) submit an NOI certifying the type(s) of activity undertaken at a facility, and committing the operator to comply with the terms and conditions of the Permit; ii) eliminate unauthorized non-storm water discharges;¹¹ iii) develop a comprehensive SWPPP that assesses sources of pollutants and describes BMPs that will reduce or prevent pollutants in storm water discharges; iv) monitor, sample and/or analyze storm water discharges and authorized non-storm water discharges; and v) file complete and accurate Annual Reports by July 15 of each year, in which the owner/operator provides basic facility details (e.g. SIC Code(s)), summarizes the past year's industrial activities, reports on corrective actions taken in response to sampling/analysis data, and certifies compliance with the terms and conditions of the Permit.

All facilities must analyze each stormwater sample for three sets of pollutants—basic parameters, industry-specific parameters, and site-specific parameters. Basic parameters are the standard pollutants every industrial facility must test for, which are Total Suspended Solids ("TSS"), pH, Specific Conductance ("SC")¹², and either Total Organic Carbon ("TOC") or Oil and Grease ("O&G"). 1997 Permit, Section B(5)(c)(i); 2015 Permit, Sections XI(B)(6)(a)-(b). Industry-specific parameters are set in relationship to SIC codes and include pollutants commonly associated with specific industrial operations. 1997 Permit, Section B(5)(c)(iii); 2015 Permit, Section XI(B)(6)(d). Lastly, site-specific parameters are those pollutants specifically associated with processes and activities at a specific facility. 1997 Permit, Section B(5)(c)(ii); 2015 Permit, Section XI(B)(6)(c).

¹¹ Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

¹² The 2015 Permit does not require facilities to analyze samples for Specific Conductance.

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Facility owners and operators must then compare analytical data from stormwater sampling to numeric values (“Benchmarks”) published by the EPA that serve as objective measures for evaluating whether a facility’s BMPs achieve the statutory BAT/BCT standards of the Act. *See United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); MSGP, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); MSGP, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000) (as modified effective May 9, 2009). Under certain conditions, a facility will also be required to compare analytical data to limits (both numeric and narrative) established elsewhere, including in the Basin Plan and the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 (“CTR”).¹³

The 1997 Permit embodied an “iterative” approach whereby the analyses of storm water samples would inform a permittee as to the efficacy of its BMPs, who would then voluntarily revise BMPs so as to reduce pollutant concentrations to within numeric or narrative limits. In response to a widespread industry practice of ignoring and/or avoiding the flexible requirements of the 1997 Permit, the State Board established numeric action levels (“NALs”) and a compulsory BMP-review process in the 2015 Permit. *See* 2015 Permit Factsheet at 55-60. Under the 2015 Permit, the exceedance of a NAL triggers a requirement under which dischargers must prepare various Exceedance Response Actions (“ERAs”), i.e. comprehensive technical assessments of pollutants on site, design and implement improved and/or new BMPs, and revise the facility SWPPP accordingly. 2015 Permit, Section XII.

B. Citizen Enforcement

In designing the Act, Congress acknowledged “the Government simply is not equipped to take court action against the numerous violations [...] likely to occur [under the Act].” 116 Cong. Rec. 33,104 (1970) (statement of Sen. Hart).¹⁴ In anticipating this challenge, Congress crafted Section 505 to encourage citizen plaintiffs to act as private attorney’s general. Citizen plaintiffs, therefore, fill a critical social role by enforcing the Act’s mandate and are “welcomed participants in the vindication of environmental interests.” *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2nd Cir. 1976).

Citizen plaintiffs also fill an essential economic role. Water pollution results in inefficient economic outcomes caused by market failures that are frequently associated with common pool resources like surface waters and oceans. Enforcement actions under Section 505 help correct these market failures by forcing firms to internalize the social welfare impacts (i.e. costs) of water pollution that would otherwise be borne by society. Society at large pays handsomely when business owners fail to operate efficiently. The most common costs are associated with human illness (health care costs, lost productivity, etc.), habitat loss, ecosystem service disruption (e.g. clean irrigation water for agriculture), wildlife disturbances, and

¹³ Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

¹⁴ *See also* 116 Cong. Rec. 33,104 (1970) (statement of Sen. Muskie) “I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies are, they will be able to monitor the potential violations of all the requirements contained in the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties.”

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detrimental impacts to tourism.

C. Standards Applicable Under the Act and Permit¹⁵

As described above, the Act prohibits discharging pollutants to waters of the United States from a point source, except as permitted under an NPDES permit, such as California's General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The 1997 Permit and the 2015 Permit both require that dischargers meet all applicable provisions of the Act's Sections 301 and 402.

1. *Effluent Limitation*

The Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. 1997 Permit, Section B(3), 2015 Permit, Section V(A); *see also* 1997 Permit, Section A(8); 2015 Permit, Section X(H). Benchmarks and/or NALs established for basic- and industry-specific pollutants discharged from the Facility, and for which Lompoc must analyze storm water samples, are summarized below at TABLE 1.

TABLE 1
BENCHMARK AND NAL VALUES APPLICABLE TO THE FACILITY

PARAMETER/ POLLUTANT	EPA BENCHMARK	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH	6.0-9.0 s.u.	n/a	6.0-9.0 s.u.
TSS	100 mg/L	100 mg/L	400 mg/L
O&G	15 mg/L	15 mg/L	25 mg/L
COD	120 mg/L	120 mg/L	n/a
SC	200 uhmos/cm	n/a	n/a

2. *Receiving Water Limitations*

The Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS"), as defined in, *inter alia*, the Basin Plan.¹⁶ 1997 Permit, Section C(2); 2015 Permit, Section VI(A). Discharges that contain pollutants in excess of an applicable WQS violate these Receiving Water Limitations. The Receiving Water Limitations also prohibits storm water discharge (and authorized non-storm water discharges) to surface waters that adversely impact human health or the environment. 1997 Permit, Section C(1); 2015 Permit, Section VI(B). Thus, any discharge that contains pollutant concentrations exceeding levels that adversely impact aquatic species, the environment, and/or human health constitute violations of the Permit.

3. *Discharge Prohibitions*

The Permit also contains an outright prohibition on the discharge of materials other than

¹⁵ The description of standards applicable under the Act and Permit are not intended as a comprehensive recitation of every potential requirement, nor a complete description of each standard addressed. Rather, this section of the Notice Letter is intended to summarize the standards most relevant to facilities like those operated by Lompoc.

¹⁶ Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

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storm water (“non-storm water discharges” or “NSWD”) directly or indirectly to waters of the United States. 1997 Permit, Section A(1); 2015 Permit, Section III(B). The Discharge Prohibitions also proscribe storm water discharges that cause or threaten to cause pollution or contamination. 1997 Permit, Section A(2); 2015 Permit, Section III(C).

4. *Monitoring and Reporting Requirements*

The Permit requires facility operators to develop and implement a storm water M&RP prior to conducting, and in order to continue, industrial activities. The primary objective of the M&RP is to detect and measure concentrations of pollutants in a facility’s storm water discharges to ensure BMPs are effective in maintaining compliance with the Permit’s Effluent Limitations, Receiving Water Limitations and Discharge Prohibitions. *See* 1997 Permit, Section B(2); *see also* 2015 Permit, Section X(I). A legally adequate M&RP ensures that BMPs achieve BAT/BCT, and is evaluated at least annually.

The principal M&RP requirements imposed by the 1997 Permit and 2015 Permit are substantially identical. *Compare* 1997 Permit, Sections B(3)-(16) to 2015 Permit, Sections X(I) and XI(A)-(D). The 1997 Permit required facilities conduct quarterly visual observations of all drainage areas for the presence of authorized and unauthorized non-storm water discharges. 1997 Permit, Section B(3). The 2015 Permit increased the frequency of visual observations to monthly, and requires that observations be completed at the same time samples are collected. 2015 Permit, Section XI(A). The Permit requires that facilities complete visual observations of storm water discharges from one event per month during the wet season. 1997 Permit, Section B(4); 2015 Permit, Section XI(A)(2). Dischargers must document observations, and any responses taken to address problems observed, including revisions made to the SWPPP. 1997 Permit, Sections B(3)-(4); 2015 Permit, Sections XI(A)(2)-(3). The Permit requires facilities to collect samples of storm water discharges from each of the discharge locations from at least two storm events under the 1997 Permit, and at least 4 storm events under the 2015 Permit¹⁷—taking care that water collected is representative of the discharge from each discharge point. 1997 Permit, Sections B(5), (7); 2015 Permit, Sections XI(B)(1)-(5). All sampling analysis data must be submitted via SMARTS within thirty (30) days of obtaining results. 2015 Permit, Section XI(B)(11).

III. **Violations of the Clean Water Act and the Storm Water Permit**

In the years since enrolling in the Permit, the City has failed to carry out its obligations under both the Permit and Act. As discussed in further detail below, the Facility is in ongoing violation of the Permit, and violations span both the 1997 Permit and 2015 Permit. Specifically, the Facility has consistently discharged pollutants in violation of the Permit’s Effluent Limitations, Receiving Water Limitations, and Discharge Prohibitions; failed to develop a legally adequate M&RP; failed to develop, implement, and/or update a legally adequate SWPPP to ensure the development and implementation of IBMPs that achieve BAT/BCT; and failed to submit accurate and complete Annual Reports. Lompoc is subject to civil penalties for all

¹⁷ The 2015 Permit requires facilities to collect samples from each discharge location from two storm events within the first half of each reporting year (July 1-Dec. 31) and two storm events from the second half of each reporting year (Jan. 1-Jun 30).

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violations of the Clean Water Act detailed below occurring since April 26, 2012.

A. Discharges of Storm Water in Violation of Effluent Limitations

Information available to CLAWS indicates that the Facility has failed and continues to fail to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT/BCT. The Facility has an extraordinarily consistent pattern of exceedances of multiple parameters since at least 2003. In fact, according to information available to CLAWS, the Facility has discharged polluted storm water in violation of the Permit's Effluent Limitations during every single rain event over the course of the last five years.

As noted above, Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT as required by the Permit's Effluent Limitations. The data summarized in TABLE 2 (below) establish that Lompoc has discharged and continues to discharge pollutants well in excess of Benchmark values.

TABLE 2
STORMWATER DATA FROM QSE'S BETWEEN 2012 AND 2017

LINE	SAMPLE DATE	PARAMETER	OBSERVED CONCENTRATION	BENCHMARK/ NAL	DISCHARGE POINT
2012					
1	10.10.12	TSS	234 mg/L	100 mg/L	1
2	10.10.12	TSS	232 mg/L	100 mg/L	2
3	10.10.12	TSS	164 mg/L	100 mg/L	3
4	10.10.12	COD	347 mg/L	120 mg/L	1
5	10.10.12	COD	314 mg/L	120 mg/L	2
6	10.10.12	COD	336 mg/L	120 mg/L	3
7	10.10.12	SC	326 uhmos/cm	200 uhmos/cm	1
8	10.10.12	SC	359 uhmos/cm	200 uhmos/cm	2
9	10.10.12	SC	270 uhmos/cm	200 uhmos/cm	3
10	11.09.12	TSS	146 mg/L	100 mg/L	1
11	11.09.12	TSS	238 mg/L	100 mg/L	2
12	11.09.12	TSS	530 mg/L	100 mg/L	3
13	11.09.12	COD	130 mg/L	120 mg/L	1
14	11.09.12	COD	164 mg/L	120 mg/L	2
15	11.09.12	COD	319 mg/L	120 mg/L	3
2013					
<i>The Facility did not collect or analyze samples during 2013.</i>					
2014					
16	02.06.14	TSS	150 mg/L	100 mg/L	1
17	02.06.14	TSS	250 mg/L	100 mg/L	3
18	02.06.14	COD	289 mg/L	120 mg/L	1
19	02.06.14	COD	132 mg/L	120 mg/L	2
20	02.06.14	COD	492 mg/L	120 mg/L	3
21	02.06.14	SC	633 uhmos/cm	200 uhmos/cm	3
22	12.11.14	TSS	257 mg/L	100 mg/L	1
23	12.11.14	TSS	114 mg/L	100 mg/L	2
24	12.11.14	TSS	273 mg/L	100 mg/L	3
25	12.11.14	COD	264 mg/L	120 mg/L	1

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26	12.11.14	COD	185 mg/L	120 mg/L	2
27	12.11.14	COD	477 mg/L	120 mg/L	3
28	12.11.14	SC	220 uhmos/cm	200 uhmos/cm	1
29	12.11.14	SC	230 uhmos/cm	200 uhmos/cm	3
2015					
30	10.01.15	TSS	341 mg/L	100 mg/L	1
31	10.01.15	TSS	355 mg/L	100 mg/L	2
32	10.01.15	TSS	987 mg/L	100 mg/L	3
33	10.01.15	COD	586 mg/L	120 mg/L	1
34	10.01.15	COD	648 mg/L	120 mg/L	2
35	10.01.15	COD	1101 mg/L	120 mg/L	3
36	10.01.15	SC	482 uhmos/cm	200 uhmos/cm	1
37	10.01.15	SC	504 uhmos/cm	200 uhmos/cm	2
38	10.01.15	SC	620 uhmos/cm	200 uhmos/cm	3
39	11.02.15	TSS	266 mg/L	100 mg/L	1
40	11.02.15	TSS	390 mg/L	100 mg/L	2
41	11.02.15	TSS	592 mg/L	100 mg/L	3
42	11.02.15	COD	232 mg/L	120 mg/L	1
43	11.02.15	COD	326 mg/L	120 mg/L	2
44	11.02.15	COD	491 mg/L	120 mg/L	3
2016					
45	01.19.16	TSS	174 mg/L	100 mg/L	1
46	01.19.16	TSS	284 mg/L	100 mg/L	2
47	01.19.16	TSS	108 mg/L	100 mg/L	3
48	01.19.16	COD	144 mg/L	120 mg/L	1
49	01.19.16	COD	238 mg/L	120 mg/L	2
50	01.19.16	COD	133 mg/L	120 mg/L	3
51	03.11.16	TSS	512 mg/L	100 mg/L	1
52	03.11.16	TSS	160 mg/L	100 mg/L	2
53	03.11.16	TSS	153 mg/L	100 mg/L	3
54	03.11.16	COD	227 mg/L	120 mg/L	1
55	12.15.16	TSS	100 mg/L	100 mg/L	3
56	12.15.16	COD	149 mg/L	120 mg/L	1
57	12.15.16	COD	197 mg/L	120 mg/L	2
58	12.15.16	COD	168 mg/L	120 mg/L	3
59	12.30.16	TSS	168 mg/L	100 mg/L	2
60	12.30.16	TSS	120 mg/L	100 mg/L	3
61	12.30.16	COD	161 mg/L	120 mg/L	2
62	12.30.16	COD	168 mg/L	120 mg/L	3
63	12.30.16	pH	4.56 S.U.	6.0-9.0 S.U	2
2017					
64	02.03.17	TSS	240 mg/L	100 mg/L	2
65	02.03.17	TSS	240 mg/L	100 mg/L	3
66	02.03.17	COD	130 mg/L	120 mg/L	2
67	02.03.17	COD	130 mg/L	120 mg/L	3

These data demonstrate that the Facility has failed and continues to fail to develop or implement BMPs that achieve compliance with the Act's BAT/BCT mandates. But the results of storm water analysis detailed in TABLE 2 tell a larger story—between 2012 and 2017 the City consistently exhibited a complete disregard for the iterative process of planning, on-the-ground implementation and corrective action envisioned by the Permit and required for compliance with the Act. For example, the Facility's TSS exceedances during 2017 exceed the majority of

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concentrations taken in 2016 and 2015. Rather than showing a trend toward improved pollution control, the City backslides on this parameter.

The City's pattern of failing to take corrective action is further illustrated by data summarized in 2013 by the Regional Board in a letter reproduced below in TABLE 3.

TABLE 3
RB3'S SUMMARY OF FACILITY'S STORMWATER POLLUTION BETWEEN 2003 AND 2012

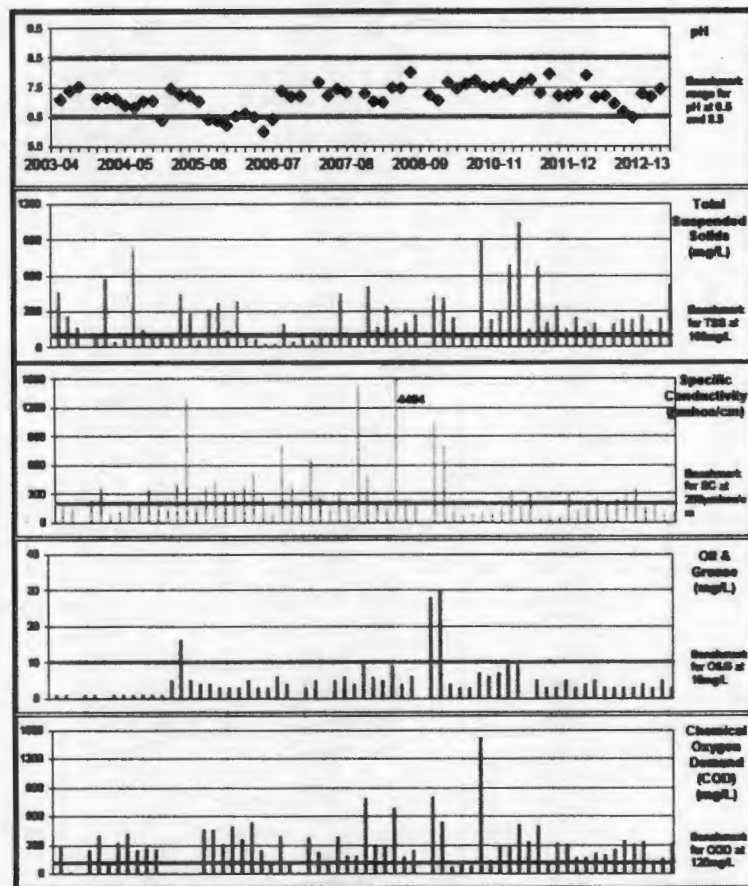


TABLE 3 evidences some particularly troubling facts. First, the City's pattern of disregarding its contribution of pollutants to the Receiving Waters extends as far back as 2003, spanning not just the 2012 to 2017 that is the focus of this letter. Second, TABLE 3 establishes that the City had specific, actual knowledge of serious problems that required corrective action at the Yard long ago. Third, the Facility's recent discharges were *as or more* polluted than any discharge over the past 15 years, *see e.g.* data from October 1, 2015, specifically at sample point 3 on lines 32, 35 and 38. Lastly, incredibly high readings of SC up until 2015, at which point the Facility ceased analyzing stormwater for this parameter, provides strong evidence of metal(s) in discharges.

Against this evidentiary backdrop, it is especially concerning that the Facility's Annual Site Evaluation, completed by Dirk Ishiwata on 6/29/2016, indicates that the City has not changed any BMPs since 9/25/2015 and does not intend to take any corrective action in response

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to the data on lines 30-50 above (see IMAGE 1 below). In short, City has been in violation of the Permit's Effluent Limitations since at least 2003, and has failed and continues to fail to develop or implement BMPs that achieve compliance with the Act.

IMAGE 1

LOMPOC'S FAILURE TO SINCERELY ENGAGE IN TAKING CORRECTIVE ACTION

Are there new BMPs or changes to BMPs that are indicated based on records and experiences during the previous permit year? If yes, identify the new or changed BMPs in column 3.	<input checked="" type="checkbox"/>	
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Each time the Facility discharges polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

CLAWS puts Lompoc on notice that it violates the Effluent Limitations every time it discharges storm water without adequate BMPs. *See* Exhibit 2 (setting forth dates of significant rain events).¹⁸ These discharge violations are ongoing and will continue every time the Facility discharges polluted storm water without developing and/or implementing BMPs consistent with BAT/BCT standards. CLAWS may supplement and update TABLE 2 as additional data becomes available. Lompoc is subject to civil penalties for all violations of the Clean Water Act occurring since April 26, 2012.

CLAWS puts Lompoc on notice that the 2015 Permit Effluent Limitation V.A is a separate, independent requirement with which all facilities must comply, and that carrying out the iterative process triggered by exceedances of NALs does not amount to compliance with Effluent Limitation V.A. While exceedances of a NAL demonstrate that a facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the State Board did not intend for NALs to represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.¹⁹

B. Discharges of Storm Water in Violation of Receiving Water Limitations and Discharge Prohibitions

As detailed above, the Permit's Receiving Water Limitations prohibit storm water discharge and authorized non-storm water discharges to surface waters that adversely impact human health or the environment. 1997 Permit, Section C(1); 2015 Permit, Section VI(B). Because Benchmarks are the pollutant concentrations above which EPA determined represent a

¹⁸ A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

¹⁹ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

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level of concern (i.e. a concentration at which a storm water discharge could potentially impair, or contribute to impairing, water quality or affect human health from ingestion of water of fish), each of the violations detailed above in TABLE 2 constitute independent violations of the Permit's Receiving Water Limitations.

CLAWS puts the City on notice that the 2015 Permit Receiving Water Limitations are separate, independent requirements with which the Facility must comply, and that carrying out the iterative process triggered by exceedances of the NALs do not amount to compliance with the Receiving Water Limitations. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent water quality based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of the Permit's Receiving Water Limitations.²⁰ The violations of the Receiving Water Limitations described in this Notice Letter are ongoing even if the City submits an adequate Exceedance Response Action Plan pursuant to Section XII of the 2015 Permit.

Finally, each violation of the Receiving Water Limitations described above constitutes an independent violation of the Permit's Discharge Prohibition by causing and threatening to cause pollution, and contamination of the Receiving Waters. *See* 1997 Permit, Section A(1); 2015 Permit, Section III(C). CLAWS puts the City on notice that the Permit's Receiving Water Limitations and Discharge Prohibitions are violated each time storm water discharges from the Facility. *See e.g.*, Exhibit 2. Each time the Facility discharges polluted storm water in violation of the Permit's Receiving Water Limitations and Discharge Prohibitions is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These discharge violations are ongoing and will continue every time the Yard discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. CLAWS will update the dates of violations when additional information and data become available. The City is subject to civil penalties for all violations of the Act occurring since April 26, 2012.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

As discussed above, the initial step to compliance with the Permit and Act is planning. Recognizing the importance of planning, the State Board has designated the SWPPP as the cornerstone of compliance with the NPDES Permit. Sections A(1) and E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP that meet all of the requirements prior to beginning industrial activities. The objective of the SWPPP is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges (and authorized non-stormwater discharges) from a facility, and then develop BMPs to reduce or prevent pollutant concentrations in storm water discharges. 1997 Permit, Section A(2), 2015 Permit, Section X(C). BMPs described in a SWPPP must, upon full implementation, be designed to achieve compliance with the Permit's discharge requirements. To ensure ongoing compliance with the Permit, the SWPPP must be evaluated and revised as necessary. 1997

²⁰ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

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Permit, Sections A(9)-(10), 2015 Permit, Section X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. The SWPPP is an executive planning document, and includes: a written assessment of potential sources of pollutants in stormwater runoff, control measures that will be implemented at the facility to minimize the discharge of these pollutants in runoff from the site, and a description of the monitoring program that will be employed to determine the effectiveness of the planning process and guide corrective actions. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT. As described above, a suit of effective BMPs serve as the basis for compliance with the Permit's technology-based effluent limitations. *See* 2015 Permit, Section X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. 2015 Permit, Sections X(G)(2), (4), (5).

The first legal deficiency in the Yard's SWPPP is a failure to describe and assess potential pollutant sources. The only source specifically addressed in Table 2.1, which serves as the "basis for selecting BMPs," is "Fleet Repairs." *See* SWPPP Section 2.3.1 at page 12. The SWPPP fails to include descriptions or assessments for any other pollutant sources. Among those potential pollutant sources that are most conspicuously absent include the "Metal Recycling" area, the "Vehicle Wash" area, and "Oil Recycling," all of which appear on the site map.

The Site Map itself is legally deficient. The SWPPP explicitly excludes both "locations where significant spill or leaks have occurred" and "material handling and processing areas." However, it is clear from correspondence with RB3, and corroborated by CLAWS during its own reconnaissance visit on 3/31/2017, that both activities are part of the Yard's industrial activities. *See e.g.* IMAGES 2 & 3.

IMAGES 2 & 3

PAVEMENT STAINS INDICATES ROUTINE SPILLS/LEAKS OF USED OIL AT THE OIL RECYCLING PLATFORM.



Most crucially, the SWPPP has not been adequately revised in response to storm water data or the various inspection reports and notices of violation from the Regional Board. The images above are reminiscent of notes from an inspection report completed by RB3 staff on

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1/9/2003. In that inspection reported, the Regional Board notes that waste oil drums were being stored without covers, and that oil stains on the ground indicated that basic housekeeping BMPs (e.g. prevent spills/leaks, clean up spills/leaks) were not being implemented. Again in a 2012 Compliance Audit, the Regional Board found that the City's BMP implementation deficient. In that communication, the Regional Board noted that the City had promised to address deficiencies numerous times in prior years, and that the same failures continued at the site. RB3 specifically admonishes Laurel Barcelona of the City to "keep detailed records of actions taken to correct deficiencies, and the results of those actions, in order to demonstrate that deficiencies have been corrected." However, the SWPPP prepared in 2015 does not contain detailed explanations for if/how operations had changed to address the specific problems noted by the Regional Board.

In fact, even the City's recent ERA Level 1 reports and subsequent BMP revisions are legally inadequate. For example, the 2012 audit notes that staff "observed a straw wattle or fiber roll placed around the drain inlets and held in place with a concrete brick. Fiber rolls are designed to work best when staked down and keyed-in on bare earth to distribute sheet flows and reduce points of concentrated flow. When placed on hard surfaces water, sediment, and non-visible pollutants can seep under and allow visible and non-visible pollutants to bypass the fiber rolls and enter the discharge inlets. Oxygen demanding chemicals can also migrate past inefficient BMPs." On CLAWS' 3/31/2017 site reconnaissance, however, straw wattles held in place by sand bags were the only observable BMPs at one of the Facility's most troublesome discharge points. The City's failure to undertake adequate corrective actions is further supported by the fact that discharges continue to exceed TSS and COD (e.g. TABLE 2, lines 59-67) limits even after the BMPs crafted in the ERA process were implemented.

The City has failed and continues to fail to adequately develop, implement, and/or revise a SWPPP, in violation of SWPPP requirements of the Permit. Every day the Facility operates without an adequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Permit and Act. These violations are ongoing, and CLAWS will include additional violations when information becomes available. The City is subject to civil penalties for all violations of the Clean Water Act occurring since April 26, 2012.

D. Failure to Secure Complete Permit Coverage; Violations of Permit's Monitoring and Reporting Requirements

The City's permit registration documents and Annual Reports indicate that the Facility is categorized under SIC Code 4212 (Local Trucking Without Storage). The Facility, however, serves numerous industrial functions outside those included under SIC Code 4212. For example, the City acknowledges various storage activities, including the storage of road base, asphalt, concrete, paint, trees, pesticides/fertilizers, etc. Further, CLAWS is aware of additional industrial activities including, but not limited to, metal recycling, vehicle maintenance, nursery services, and oil recycling. Each of these activities must be disclosed to the State of California and must factor into the City's development and implementation of a compliance plan. CLAWS' greatest concern in this regard is that without wholly defining the nature of industrial activities being conducted on site, the City is very likely failing to comply with the Permit's monitoring requirements. Specifically, the City has likely violated and continues to violate the monitoring requirements regarding which parameters must be analyzed. As noted above, high SC

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exceedances indicate the presence of metals in stormwater discharges, but to date the Facility has not tested a single sample for metal constituents.

E. Failure to File True and Correct Annual Reports

The City has also failed, and continues to fail, to submit complete and accurate Annual Reports that comply with the Permit's reporting requirements. For example, in each Annual Report filed since the filing of 2012, Lompoc has certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Permit; (2) the SWPPP's BMPs address existing potential pollutant sources and additional BMPs are not needed; and (3) the SWPPP complies with the Permit, or will otherwise be revised to achieve compliance. However, information available to CLAWS, as outlined in this Notice Letter, indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above EPA's Benchmarks, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. Further, the Facility's SWPPP does not include certain elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

In addition, the facility operator must report any noncompliance with the Permit at the time an Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). Lompoc has not reported non-compliance or corrective actions as required.

As such, the City is in daily violation of the Permit. Every day the City conducts operations at the Facility without reporting as required by the Permit is a separate and distinct violation of the Permit and Section 301(a) of the Act, 33 U.S.C. §1311(a). The City has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least April 26, 2012. These violations are ongoing, and CLAWS will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements. *See* 2015 Permit, Sections XII, XVI.

IV. Persons Responsible for the Violations

CLAWS puts the City on notice that it is the entity responsible for the violations of the Act described above. If additional entities or persons are identified as also being responsible for the violations described herein, CLAWS intends to include those entities or persons in this action.

V. Name and Address of Noticing Party

Committees for Land, Air, Water and Species
Post Office Box 92233
Santa Barbara, CA 93190

VI. Counsel

Please direct all communications to lead legal counsel retained by CLAWS for this matter:

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Jesse C. Swanhuysen
Anacapa Law Group, Inc.
508 East Haley Street
Santa Barbara, CA 93103
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VII. Penalties

Pursuant to Section 309(d) of the Act and the Adjustment of Civil Monetary Penalties for Inflation, each separate violation of the Act subjects the violator to a penalty of up to \$51,570 per day per violation for violations occurring after November 2, 2015; and up to \$37,500 per day per violation for violations occurring prior to and including November 2, 2015. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4. In addition to civil penalties, CLAWS will seek injunctive relief to prevent further violations of the Act pursuant to Sections 505(a) and (d). *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

CLAWS believes this Notice Letter sufficiently states grounds for filing suit. CLAWS intends to file a citizen suit under Section 505(a) of the Act against the City, the Facility and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CLAWS is willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, you should initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period.

Sincerely,

ANACAPA LAW GROUP, INC.

/s/ Jesse C Swanhuysen

Jesse C. Swanhuysen
Lawyer for CLAWS

Attachment A – Rain Event Summary for the Facility: 2012 through 2017

Cc: Jeff Sessions, U.S. Department of Justice
Scott Pruitt, U.S. Environmental Protection Agency
Alexis Strauss, U.S. Environmental Protection Agency (Region IX)
Thomas Howard, State Water Resources Control Board
John Robertson, Regional Water Quality Control Board (Region 3)